

GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: February 13, 2020  
MOAHR Docket No.: 19-012354  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

## **ADMINISTRATIVE LAW JUDGE: Colleen Lack**

### **DECISION AND ORDER**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on January 16, 2020. [REDACTED], son and Authorized Hearing Representative (AHR), represented the Petitioner. Sonja Love Felton, Executive Director, represented the Respondent, Huron Valley PACE. Tamika Johnson, Medical Social Worker; and Tina Berry, Enrollment Manager, appeared as witnesses for Respondent.

During the hearing proceeding the Respondent's Hearing Summary packet was admitted as marked Exhibits A-F.

### **ISSUE**

Did the Program of All-Inclusive Care for the Elderly (PACE) organization properly deny Petitioner's request for out of home placement?

### **FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Huron Valley PACE is an organization that contracts with the Michigan Department of Health and Human Services ("MDHHS" or "Department") and oversees the PACE program in Petitioner's geographical area.
2. Petitioner is an ongoing participant with Huron Valley PACE.

3. Petitioner's services include going to the PACE center 5 days per week, 20 hours per week of in-home care, and 5 respite days per year. (Exhibit C; Executive Director and Enrollment Manager Testimony)
4. On or about October 29, 2019, Petitioner's son requested out of home placement for Petitioner due to stress in the home. Petitioner's son has lost 20 pounds trying to maintain a healthy home environment for both his mother and his wife; his wife gave him an ultimatum to have Petitioner placed or to leave the home with Petitioner; and Petitioner got aggressive with her nine year old granddaughter. (Exhibit B; Executive Director Testimony)
5. The Interdisciplinary Team (IDT) determined that Petitioner's request would be denied as not medically necessary at this time. (Exhibit C; Executive Director Testimony)
6. PACE believes that there are additional options, such as dementia training for the family, safety measures that can be put place in the home, and possibly increasing the respite to monthly. (Executive Director and Enrollment Manager Testimony)
7. On October 30, 2019, an Adequate Action Notice of Service Request was issued to Petitioner stating that Petitioner's request for out of home placement was denied. Petitioner's current services were listed, and it was noted that PACE's mission is to keep participants in their home. (Exhibit C)
8. On November 14, 2019, the Michigan Office of Administrative Hearings and Rules (MOAHR) initially received Petitioner's request for hearing. On November 27, 2019, the hearing request was re-submitted with documentation of the Power of Attorney. (Exhibit A)

### **CONCLUSIONS OF LAW**

The Medical Assistance Program (MA) is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

PACE services are available as part of the Medicaid program:

The Program of All-Inclusive Care for the Elderly (PACE) is an innovative model of community-based care that enables elderly individuals, who are certified by their state as needing nursing facility care, to live as independently as possible.

PACE provides an alternative to traditional nursing facility care by offering pre-paid, capitated, comprehensive health care services designed to meet the following objectives:

- Enhance the quality of life and autonomy for frail, older adults;
- Maximize the dignity of, and respect for, older adults;
- Enable frail, older adults to live in the community as long as medically and socially feasible; and
- Preserve and support the older adult's family unit.

The PACE capitated benefit was authorized by the Balanced Budget Act of 1997 and features a comprehensive service delivery system with integrated Medicare and Medicaid financing.

An interdisciplinary team, consisting of professional and paraprofessional staff, assesses beneficiary needs, develops a plan of care, and monitors delivery of all services (including acute care services as well as nursing facility services, when necessary) within an integrated system for a seamless provision of total care. Typically, PACE organizations provide social and medical services in an adult day health center supplemented by in-home and other services as needed.

The financing model combines payments from Medicare and Medicaid, allowing PACE organizations to provide all needed services rather than be limited to those reimbursable under the Medicare and Medicaid fee-for-service systems. PACE organizations assume full financial risk for beneficiary care without limits on amount, duration, or scope of services.

Physicians currently treating Medicaid patients who are in need of nursing facility care may consider PACE as an option. Hospital discharge planners may also identify suitable candidates for referral to PACE as an alternative to a nursing facility. (Refer to the Directory Appendix for PACE contact information.)

## **SECTION 2 – SERVICES**

The PACE organization becomes the sole source of services for Medicare and Medicaid beneficiaries who choose to enroll in a PACE organization.

The PACE organization is able to coordinate the entire array of services to older adults with chronic care needs while allowing elders to maintain independence in the community for as long as possible. The PACE service package must include all Medicare and Medicaid covered services, in addition to other services determined necessary by the interdisciplinary team for the individual beneficiary.

Services must include, but are not limited to:

- Adult day care that offers nursing, physical, occupational and recreational therapies, meals, nutritional counseling, social work and personal care
- All primary medical care provided by a PACE physician familiar with the history, needs and preferences of each beneficiary, all specialty medical care, and all mental health care
- Interdisciplinary assessment and treatment planning
- Home health care, personal care, homemaker and chore services
- Restorative therapies
- Diagnostic services, including laboratory, x-rays, and other necessary tests and procedures
- Transportation for medical needs
- All necessary prescription drugs and any authorized over-the-counter medications included in the plan of care
- Social services
- All ancillary health services, such as audiology, dentistry, optometry, podiatry, speech therapy, prosthetics, durable medical equipment, and medical supplies
- Respite care
- Emergency room services, acute inpatient hospital and nursing facility care when necessary
- End-of-Life care

Medicaid Provider Manual (MPM), October 1, 2019 version  
PACE Chapter, pp. 1-2  
(Underline added by ALJ)

The Code of Federal Regulations (CFR) addresses PACE programs, in part these regulations state:

### **§ 460.90 PACE benefits under Medicare and Medicaid.**

If a Medicare beneficiary or Medicaid beneficiary chooses to enroll in a PACE program, the following conditions apply:

- (a) Medicare and Medicaid benefit limitations and conditions relating to amount, duration, scope of services, deductibles, copayments, coinsurance, or other cost-sharing do not apply.
- (b) The participant, while enrolled in a PACE program, must receive Medicare and Medicaid benefits solely through the PACE organization.

### **§ 460.92 Required services.**

The PACE benefit package for all participants, regardless of the source of payment, must include the following:

- (a) All Medicare-covered items and services.
- (b) All Medicaid-covered items and services, as specified in the State's approved Medicaid plan.
- (c) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

### **§ 460.96 Excluded services.**

The following services are excluded from coverage under PACE:

- (a) Any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service.
- (b) In an inpatient facility, private room and private duty nursing services (unless medically necessary), and nonmedical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the interdisciplinary team as part of the participant's plan of care).

\*\*\*\*

**§ 460.98 Service delivery.**

- (a) Plan. A PACE organization must establish and implement a written plan to furnish care that meets the needs of each participant in all care settings 24 hours a day, every day of the year.
- (b) Provision of services.
  - (1) The PACE organization must furnish comprehensive medical, health, and social services that integrate acute and long-term care.
  - (2) These services must be furnished in at least the PACE center, the home, and inpatient facilities.

\*\*\*\*

Petitioner is an ongoing participant with Huron Valley PACE. Petitioner's services include going to the PACE center 5 days per week, 20 hours per week of in-home care, and 5 respite days per year. (Exhibit C; Executive Director and Enrollment Manager Testimony)

On or about October 29, 2019, Petitioner's son requested out of home placement for Petitioner due to stress in the home. Petitioner's son has lost 20 pounds trying to maintain a healthy home environment for both his mother and his wife; his wife gave him an ultimatum to have Petitioner placed or to leave the home with Petitioner; and Petitioner got aggressive with her nine year old granddaughter. (Exhibit B; Executive Director Testimony)

The IDT determined that Petitioner's request would be denied as not medically necessary at this time. (Exhibit C; Executive Director Testimony) PACE believes that there are additional options, such as dementia training for the family, safety measures that can be put in place in the home, and possibly increasing the respite to monthly. (Executive Director and Enrollment Manager Testimony) Accordingly, on October 30, 2019, an Adequate Action Notice of Service Request was issued to Petitioner stating that Petitioner's request for out of home placement was denied. Petitioner's current services were listed, and it was noted that PACE's mission is to keep participants in their home. (Exhibit C)

Petitioner's son acknowledged that Petitioner initially thrived when she started with the PACE program and moved into his home. However, Petitioner's functional abilities have declined. For example, Petitioner can no longer go upstairs and use the shower. While PACE is now showering Petitioner once per week, it is not enough, such as when Petitioner had an accident. Further, Petitioner's behaviors have increased. Attempts to try to go outside occur at all hours of the night. While there is an alarm, this awakens not just Petitioner's son, but his nine-year-old daughter as well. Particularly concerning is that Petitioner is becoming more aggressive with her

granddaughter. Petitioner recently put her hands on her granddaughter, and Petitioner's son's wife has had enough. Petitioner's son explained that when Petitioner moved into the home, there was an understanding that if it ever came to a point where his daughter's safety is concerned, they would need to find a new situation for Petitioner. Petitioner's son feels they are past a point where family training regarding dementia will resolve the issues. Petitioner's son's wife has given him an ultimatum, which makes things very difficult. As indicated in the hearing request, Petitioner's son will likely be facing divorce if Petitioner is not placed somewhere and the house would have to be sold. As a result, Petitioner would still have to be placed somewhere. Petitioner's son could not reside in an apartment with Petitioner as he would not be able to have his mother in a home where his daughter would come to visit. (Exhibit A; Son Testimony)

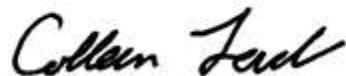
The above cited MPM policy and CFRs state that the PACE service package must include all Medicare and Medicaid covered services, in addition to other services determined necessary by the interdisciplinary team for the individual beneficiary. The CFRs indicate that PACE can provide services at an inpatient facility. The CFRs also indicate the PACE IDT must authorize all services and any service that is not authorized by the IDT is not excluded, unless it is an emergency service. However, Respondent has not provided any policy or guidelines regarding how they review medical necessity for out of home placement. Accordingly, it is difficult for this ALJ to review the IDT's determination. Further, it is unclear how the IDT weighed the probability that the current family home setting will likely not exist much longer for Petitioner to continue to live with her son and his family.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the PACE organization improperly denied Petitioner's request for out of home placement based on the available information.

### **IT IS THEREFORE ORDERED** that

The Respondent's decision is REVERSED and it must initiate a reassessment of Petitioner's request for out of home placement.



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**Colleen Lack**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

CL/dh

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139

**DHHS -Dept Contact**

Roxanne Perry  
400 S Pine St  
Capitol Commons  
Lansing, MI 48909

**Authorized Hearing Rep.**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

**Community Health Rep**

Huron Valley PACE  
2940 Ellsworth Rd  
Ypsilanti, MI 48197

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]